

Bainbridge Island Ethics Board – Advisory Opinion

Re: AO2008-2
Date of Issue: October 8, 2008

You have submitted two related statements concerning actions of a City Council member, and we discuss each in turn below

1. Facts as first presented:

You have stated that a City Council member may have influenced City staff to incorporate environmental monitoring requirements for a turf field project near the Council member's home, and that these requirements are more stringent than those in place for a similar field elsewhere on the island. The decision on the field in question was made by the City, while the decision on the other field was made by the school district.

The Code of Ethics does not specifically prohibit an elected official from contacting City staff with the intention of influencing their work. However, such contact could be improper if the Council member, acting through the City staff member, had a conflict of interest.

A conflict of interest might arise if a Council member has a "private interest" in a matter (Code Article II, D, 1, b). This phrase is not defined in the Code. However, in other jurisdictions, the phrase has been interpreted to mean that a public official is not prohibited from participating in a decision that might affect the official's private interests when:

1. The action affects a whole class of similarly-situated interests; and
2. The official's interest is not significant when compared to all affected interests in the class; and
3. The effect on the interests of the official is neither significantly greater nor less than upon other members of the class.¹

In this case, the Council member is not affected differently from other members of the public living near the field in question. However, the Council member (like all residents near the field) does appear to be treated differently from those living near the second field. Different groups of similarly situated citizens were, in fact, given differing levels of environmental protection, despite being in very similar circumstances.

¹ See for example, Wisconsin Government Accountability Board, *Mitigating Conflicting Interests: Private Interest vs. Public Responsibility*

Nevertheless, the facts you have presented only support the conclusion that this resulted from differing decisions by different agencies. The information as presented to the Ethics Board does not establish or allege that the Council member had any role in the school district decision.

We conclude that, based on the facts presented, the official did not have a conflicting private interest with regard to the City's actions affecting the environmental protections for the turf field project.

2. Additional facts presented:

You state that a petition in opposition to the turf field project was presented to City Council by a citizen who was a large contributor to the City Council member's political campaign, and that the Council member did not disclose this fact.

Campaign contributions are specifically mentioned in the prohibited gifts section of the Code. The Code states that a campaign contribution would not be a prohibited gift if it was "reported in accordance with law." We have no facts about whether the contribution was reported as required by Washington state law, and we therefore have no evidence to find that the contribution was a prohibited gift.

The Bainbridge Island Code of Ethics also requires disclosure by public officials for any "financial interest in any matter that comes before them" (Article II, Section D (3)). However, based on the facts presented, the Council member did not have a financial interest in the specific matter which was the subject of the petition.

We therefore conclude that the situation did not present a conflict of interests, and the official was not required to disclose the relationship except as is required by law for any campaign contribution.

C: City Clerk
 City Attorney